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CORPORATE PATENT COUNSEL
U.S. PHILIPS CORPORATION
580 WHITE PLAINS ROAD
TARRYTOWN, NY 10591

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OFFICE OF PETITIONS

In re Application of :
Daniel Pelletier : DECISION DISMISSING
Application No. 09/772,484 : PETITION
Filed: 29 January, 2001 :
Attorney Docket No. US010008 :

This is a decision in reference to the letter filed on 17 September, 2001, which is treated as a petition under 37 CFR 1.10(c) requesting that the above-identified application be accorded a filing date of 30 January, 2001, rather than the presently accorded filing date of 29 January, 2001.

Petitioner asserts that the application was deposited in Express Mail service on 30 January, 2001.

Paragraph (c) of 37 CFR 1.10 states that:

Any person filing correspondence under 37 CFR 1.10 that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the papers or fees that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

The instant petition lacks the showing required by items (1) and (3).

In regards to item (1), above, petitioner did not file the instant petition until over three months after the mailing date of the Filing Receipt showing the purportedly incorrect filing date. As the showing of record indicates a lack of diligence, petitioner must explain in detail, in its renewed petition, why the instant petition should not be dismissed out of hand as untimely.

In regards to item (3), above, petitioner has not supplied a true copy of the Express Mail mailing label showing the date-in or other official USPS notation. Any renewed petition must include a true copy of the Express Mail mailing label. The only documents presented by petitioner in support of the petition are a copy of the itemized application transmittal sheet, containing the Express Mail label number and a "Certificate of Express Mailing," which was sent with the original application papers and an itemized postcard receipt bearing an "Office date" of 29 January, 2001. Petitioner should also note that the requirement of 37 CFR 1.10(c) for a certificate of mailing by "Express Mail" has been waived by the Commissioner.¹ Thus, the certificate of mailing by "Express Mail" does not serve as evidence of the date of mailing.

The application is being forwarded to Technology Center 2600 for further processing with a filing date of 29 January, 2001.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6918.



Douglas I. Wood
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹See 1174 O.G. Pat. Of. 92 (May 16, 1995).